

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JERRY VANDIVER,

Plaintiff,

vs.

Case No. 08-CV-10487  
HON. GEORGE CARAM STEEH

BRAD TERRILL,  
BRIAN WEST,

Defendants.

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ORDER DENYING PLAINTIFF'S OBJECTIONS AS ON RECONSIDERATION (#14)

Magistrate Judge Charles Binder issued a March 28, 2008 Report and Recommendation recommending that the court vacate pro se prisoner Jerry Vandiver's in forma pauperis status because Vandiver had three "strikes" against him under 28 U.S.C. § 1915(g) before filing this lawsuit. Magistrate Judge Binder also recommended that the court dismiss Vandiver's claims for failing to pay the filing fee by April 28, 2008. On April 30, 2008, this court issued an Order accepting the Report and Recommendation, noting Vandiver failed to file timely objections. Vandiver moved for reconsideration of the court's April 30, 2008 Order on May 16, 2008 arguing he did not receive copies of the Report and Recommendation or the court's Order, attributing this failure to his new residence at Michigan's Huron Valley Mens' Facility in Ypsilanti, Michigan. On May 28, 2008, the court granted in part Vandiver's motion for reconsideration, notwithstanding Vandiver's failure to apprise the court of his change of address, allowing Vandiver to file objections to the Report and Recommendation on or before June 16, 2008, as on reconsideration of the April 30, 2008 Order dismissing his claims. Vandiver timely filed objections on June 13, 2008.

To prevail on a motion for reconsideration, the movant must demonstrate an error

by which the court and the parties have been misled, and that correction of the error may result in a different disposition of the case. See E.D. Mich. LR 7.1(g)(3). Vandiver does not challenge the court's ruling that he falls within the three "strikes" rule of 28 U.S.C. § 1915(g), but simply asserts that his situation falls within the statutory exception that he is "under imminent danger of serious physical injury." Vandiver's complaint alleges he was assaulted by Officer West on August 3, 2007, and harassed by Officer Terrill on August 12, 2007, at the Gus Harrison Facility, in Adrian, Michigan. The complaint alleges Vandiver was housed at the Earnest C. Brooks Correctional Facility in Muskegon Heights, Michigan at the time it was filed. Vandiver is currently housed at the Huron Valley Men's Facility in Ypsilanti, Michigan. Under these circumstances, Vandiver's conclusionary allegation that he is under imminent danger of serious physical injury is not well taken. Vandiver's assertion that he is without money to pay the filing fee is unavailing in light of 28 U.S.C. § 1915(g).

Having considered Vandiver's objections de novo, they are without merit. Accordingly, Vandiver's objections, as on reconsideration, are hereby DENIED. There has been no error.

SO ORDERED.

Dated: June 17, 2008

s/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on  
June 17, 2008, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk